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David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505


**Re: Petition of MCI WorldCom to Enforce Interconnection Agreement
Docket No. 99-00662**

Dear David.

Please accept for filing the original and thirteen copies of MCI WorldCom's response to BellSouth's Motion to Compel in the above-captioned proceeding. A copy has been forwarded to Guy Hicks, counsel for BellSouth Telecommunications, Inc.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
Henry Walker

HW/nl
Enclosure
cc: Parties

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION

NASHVILLE, TENNESSEE

**In Re: Petition of MCI WorldCom to Enforce Interconnection Agreement with
 BellSouth
 Docket No. 99-00662**

RESPONSE OF MCI WORLDCOM TO BELL SOUTH'S MOTION TO COMPEL

MCI WorldCom, Inc. ("MCI WorldCom") submits the following response in opposition to the motion of BellSouth Telecommunications, Inc. ("BellSouth") to compel responses to discovery.

SUMMARY

Two days ago (on May 23, 2000), the Tennessee Regulatory Authority ("TRA") orally affirmed the "Initial Order of the Hearing Officer on the Merits" in the "Complaint of Hyperion against BellSouth," docket no. 98-00530. That case is virtually identical to this one. Therefore, the TRA's findings of fact and conclusions of law in *Hyperion* predetermine, to the extent applicable, the relevance of BellSouth's discovery questions in *MCI WorldCom*.

The Hyperion-BellSouth interconnection agreement was signed April 1, 1997. In the agreement, the parties agreed to pay reciprocal compensation for the delivery of "local traffic" which "is defined as:

any telephone call that originates in one exchange and terminates in either the same exchange, or an associated Extended Area Service ("EAS") exchange. The terms Exchange, and EAS exchanges are defined and specified in Section A3. of BellSouth's General Subscriber Service Tariff."

As the Hearing Officer found, (at 11) the agreement “contains no express references to [ISP traffic], and both parties confirm that this matter was not isolated for discussions during negotiations.” Based, however, on “the regulatory dynamics that existed at the time of the Agreement’s execution” (at 23) including the rules and orders of the FCC and the definition of a “completed” “local” call from BellSouth’s own tariffs, the Hearing Officer concluded that “the intentions of the parties at the time the Agreement was signed was that ISP-bound traffic be treated as local traffic.” *Id*, 23.

The agreement between BellSouth and MCI WorldCom was signed on April 4, 1997, just three days after the Hyperion agreement. It, too, provides for the payment of reciprocal compensation for “local traffic” which “is defined

as any telephone call that originates in one exchange and terminates in either the same exchange, or a corresponding Extended Area (EAS) exchange. The terms Exchange and EAS exchanges are defined and specified in Section A3 of BellSouth’s General Subscriber Service Tariff.”

The agreement contains no specific reference to ISP traffic and, based on the parties’ pre-filed testimony and their responses to discovery requests, there was no discussion of ISP traffic during negotiations.

In sum, there does not appear to be any difference -- in fact, in law, or in the surrounding circumstances — between the Hyperion contract provision on reciprocal compensation and the corresponding provision in the MCI WorldCom agreement.

BellSouth’s discovery questions to MCI WorldCom were served on the same day as the Hearing Officer released the “Initial Order” in Hyperion. Based on the Hearing Officer’s decision and the TRA’s affirmation of his ruling, much of BellSouth’s discovery is now clearly

irrelevant to the determination of whether the MCI WorldCom agreement also applies to ISP-bound traffic.

ARGUMENT

Interrogatory No. 7

Because “other parties have theorized . . . a distinction must be drawn between call ‘termination’ for jurisdictional purposes,” BellSouth “seeks to learn whether MCI WorldCom “subscribes to the same theory.” Motion to Compel, at 2-3.

MCI WorldCom has already pre-filed direct and rebuttal testimony on the meaning of “termination” in the parties’ interconnection agreement. What “termination” means in any other context is irrelevant. To the extent there is any relevant difference between the “jurisdictional” and “regulatory” treatment of local calls to ISPs, MCI WorldCom agrees with the Hearing Officer’s discussion of that issue in the “Initial Order” (at 16-18).

Interrogatories 8-12

BellSouth asks MCI WorldCom to separate local calls to ISPs from other local calls because “if BellSouth prevails in this proceeding,” MCI WorldCom would have to exclude ISP calls from its invoices to BellSouth.

Although the proportion of ISP to non-ISP traffic may be of interest to BellSouth for some other reason, it has no relevance to the issues raised in this complaint. MCI WorldCom seeks to collect reciprocal compensation for all local traffic, whether or not the traffic is routed to an ISP or some other type of business. If the TRA rules that ISP-bound calls are not classified as “Local Traffic” under the parties’ agreement, MCI WorldCom will decide whether to appeal the TRA’s decision or re-bill BellSouth for non-ISP traffic. Then, and only then, will it matter

how much of that local traffic goes to ISPs. In other words, questions 8-12 might be appropriate in another, future discovery request which could be made after (1) MCI WorldCom loses this suit,(2) MCI WorldCom sends BellSouth a revised invoice which excludes ISP traffic, (3) BellSouth refuses to pay the invoice and (4) MCI WorldCom files a new suit to enforce collection of the invoice. At that time, MCI WorldCom agrees, BellSouth's questions would be material and relevant.

Interrogatories 16, 17 , and 18

BellSouth seeks to learn how many of MCI WorldCom's customers are ISPs, how much they have been billed, and how much they have paid for service. BellSouth argues that if MCI WorldCom tried harder to attract ISP customers in 1999 than in 1997 (when the Agreement was signed) such evidence would demonstrate that MCI WorldCom did not expect to be compensated for ISP traffic in 1997. BellSouth also contends that, if MCI WorldCom offered rebates or discounts to attract ISP customers, the Authority should consider whether enforcement of the Agreement in those circumstances "is in the public interest." Motion to Compel, at 6.

BellSouth also asks whether MCI WorldCom owns, has an interest in, or is affiliated with an ISP in Tennessee. BellSouth contends that (a) if MCI WorldCom did, in fact, own an ISP in 1997, MCI WorldCom "should have affirmatively raised the ISP issue" during negotiations but that (b) if MCI WorldCom did not own an ISP in 1997, such evidence would "underscore the lack of any mutual agreement" to pay compensation for ISP traffic. In other words, it does not really matter how MCI WorldCom answers the question. BellSouth will interpret the answer to support BellSouth's position

These speculations are barely comprehensible, much less a sufficient basis to support BellSouth's discovery requests.

In *Hyperion*, BellSouth also tried to argue that Hyperion's efforts to attract ISPs as customers evidenced, one way or the other, the parties' understanding of "Local Traffic" at the time of the agreement. BellSouth's argument was apparently so far fetched that the Hearing Officer's 34 page order does not even bother to address it. Although BellSouth raised the argument again in its appeal to the TRA, Director Greer said he saw nothing in BellSouth's filings to cast any doubt on the correctness of the Hearing Officer's conclusions.

The "crucial question" in *Hyperion* was whether, "under the Agreement, the parties agreed that ISP-bound traffic should be treated as local traffic for purposes of payment of reciprocal compensation." Initial Order, 9. The "crucial question" is the same in the current proceeding. In *Hyperion*, the Authority apparently found that BellSouth's arguments concerning Hyperion's business practices in 1997 and 1999 were irrelevant. The Hearing Officer should reach the same conclusion here.

Interrogatories 21-23:

BellSouth asks again about the number of ISP customers served by MCI WorldCom and how much those customers pay for service. BellSouth argues that the answers to these questions "is relevant to a determination whether awarding the payment of reciprocal compensation for ISP traffic under the facts of this case is in the public interest."

Given the TRA's repeated decisions to treat calls to ISPs as "local traffic" for reciprocal compensation purposes, there is no longer any room for debate about whether the TRA believes such a ruling "is in the public interest." Moreover, as the TRA held in *Brooks Fiber*,

docket 98-00118, “The rights of the parties must be determined by what they have put into their agreement. It is the duty of the courts to enforce contracts according to their plain terms.” Initial Order, at 21 (citations omitted). In light of the Authority’s prior ruling on this issue, BellSouth’s claim that enforcement of the agreement would be contrary to the public interest is moot, as a practical matter, and irrelevant, as a legal issue.

Interrogatory 25.

BellSouth misunderstands the response of MCI WorldCom. As made clear in the pre-filed testimony, MCI WorldCom agrees with BellSouth that the ISP issue was never raised during negotiations.

Requests for Production of Documents Nos. 3, 4, and 5.

MCI WorldCom contends that the only documents relevant to the agreement are those created at the time of the agreement. Nevertheless, MCI WorldCom has searched for, but has been unable to find, any documents created prior to the agreement concerning the ISP issue. Since the agreement, of course, MCI has repeatedly and often stated its position that local traffic includes ISP calls, just as BellSouth has stated its own position on that issue. As the TRA held in *Hyperion* (Initial Order, at 19), the parties’ after-the-fact arguments have no relevance to the parties’ understanding of the contract at the time it was signed.

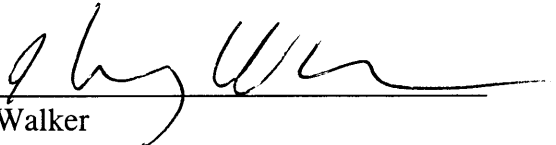
Requests for Production of Documents Nos. 6 and 6.

BellSouth again requests information about MCI WorldCom’s business plans regarding ISP customers. For the reasons explained above, those issues were irrelevant to the result reached in *Hyperion* and, therefore, are irrelevant to the outcome of this proceeding.

CONCLUSION

For these reasons, BellSouth's Motion to Compel should be denied.

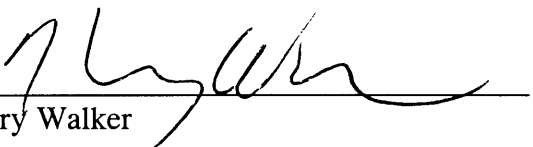
Respectfully submitted,



Henry Walker

Certificate of Service

I certify that copies of the foregoing have been mailed to Guy Hicks, counsel for BellSouth Telecommunications, Inc., 333 Commerce Street, Nashville, Tennessee 37201 this 25th day of May, 2000.



Henry Walker